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12 Hargis Photo

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION**

16 SCOTT HARGIS, d/b/a SCOTT
17 HARGIS PHOTO, an individual,

18 Plaintiff,

19 v.

20 PACIFICA SENIOR LIVING
21 MANAGEMENT, LLC, a California
22 limited liability corporation; and DOES
23 1-10, inclusive

24 Defendants.

Case No.: 2:22-cv-06989-MCS-PD
Hon. Mark C. Scarsi

**NOTICE OF MOTION AND
MOTION FOR PARTIAL
RECONSIDERATION OF
SUMMARY JUDGMENT ORDER
(DKT. 42)**

Hearing Date: December 18, 2023
Time: 9:00 a.m.
Courtroom: 7C

1 **TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF**
2 **RECORD HEREIN:**

3 **PLEASE TAKE NOTICE** that on December 18, 2023 at 9:00 a.m., or on an
4 expedited basis pursuant to the concurrently-filed *ex parte* application for expedited
5 briefing and hearing, or as soon thereafter as the matter may be heard by the Hon.
6 Mark C. Scarsi in Courtroom 7C of the above-entitled Court, located at 350 W. 1st
7 Street, Courtroom 7C, 7th Floor, Los Angeles, California 90012, Plaintiff Scott
8 Hargis dba Hargis Photo (“Hargis” or “Plaintiff”) will and hereby does move this
9 Court, pursuant to Federal Rules of Civil Procedure 60, for partial reconsideration of
10 the Court’s August 2, 2023 Order Re: Parties’ Cross Motions for Summary Judgment
11 (Dkt. No. 42).

12 In an eleventh-hour production of documents, Defendant Pacifica Senior
13 Living Management, LLC (“Pacifica” or “Defendant”) has provided a “supplemental
14 production” of documents consisting of emails and images related to Pacifica’s
15 possession of all forty-three (43) photographs on its websites after initiation of the
16 lawsuit and spoliation of evidence related to those websites. Accordingly, pursuant
17 to Rule 60(b), Hargis seeks relief from the Court’s August 2, 2023 Order, specifically
18 as it relates to a finding of willfulness on the part of Defendant as to all forty-three
19 photographs used by Defendant.

20 The basis for this motion is that Hargis has discovered new evidence—upon
21 the production of such evidence as previously withheld by Pacifica—and that
22 evidence could not have been discovered earlier. FED. R. CIV. P. 60(b)(2). It remains
23 to be seen why Pacifica or Pacifica’s prior counsel withheld those documents. FED.
24 R. CIV. P. 60(b)(3). Regardless, relief is justified. FED. R. CIV. P. 60(b)(6).

25 Further, Hargis seeks sanctions in the form of a jury instruction setting forth
26 spoliation of evidence by Pacifica and permitting the jury to draw an adverse inference
27 as to the evidence destroyed by Hargis.
28

1 This Motion is based on this Notice, the concurrently-filed Memorandum of
2 Points and Authorities, Declaration of Taylor C. Foss and exhibits thereto, the moving
3 papers and supporting documents for Hargis's motion for summary judgment (Dkt.
4 Nos. 30, 31, 32, 38), the arguments of counsel at the hearing on this Motion, and all
5 pleadings and papers on file in this action.

6 Pursuant to Local Rule 7-3, counsel for Hargis met and conferred with counsel
7 for Pacifica on November 9, 2023 when Pacifica first revealed its forthcoming late
8 production and on November 16, 2023 after Pacifica provided its late production of
9 documents.

10 A [Proposed] Order is filed concurrently herewith.

11
12 Dated: November 16, 2023

ONE LLP

13 By: /s/ Taylor C. Foss

14 John Tehranian

15 Taylor C. Foss

16 Leo M. Lichtman

17 Christopher S. Skinner

18 *Attorneys for Plaintiff,*

19 Scott Hargis, d/b/a Scott Hargis Photo
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